

**Docket No:** 00-0592  
**Bench Date:** 3/14/01  
**Deadline:** 3/15/01

**MEMORANDUM**

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**TO:** The Commission

**FROM:** Eve Moran and Leslie Haynes, Hearing Examiners

**DATE:** March 12, 2001

**SUBJECT:** Illinois Bell Telephone Company, AT&T Communications of Illinois, Inc., CoreComm Illinois, Inc., Covad Communications Company, MCI WorldCom Communications, Inc., McLeodUSA Telecommunications Services, Inc., NEXTLINK Illinois, Inc., NorthPoint Communications, Inc., Rhythms Netconnections and Rhythms Links, Inc., 21st Century Telecom of Illinois, Inc., Ushman Communications, Inc., and Sprint Communications Company L.P. d/b/a Sprint Communications L.P.

Joint Submission of the Amended Plan of Record for Operations Support Systems ("OSS")

Application for Rehearing of Ameritech Illinois

Application for Rehearing of Joint CLECs

**RECOMMENDATION:** Grant Ameritech Illinois' Application for Rehearing.  
Dismiss Joint CLECs' Application for Rehearing.

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**Introduction:**

The Commission entered a final Order in this cause on January 24, 2001 wherein it resolved a number of issues set out by the parties for arbitration.

On February 23, 2001, Ameritech Illinois ("AI") filed an Application for Rehearing on Issue No. 4 and Issue No. 29/31. On February 26, 2001, McLeod Telecommunications Services, Inc., Rhythms Links, Inc. and Covad Communications Company ("Joint CLEC Applicants") filed an Application for Rehearing on Issue No. 13 and Issue No. 19.

The last date for filing applications for rehearing was February 23, 2001. The deadline for Commission action on the applications is March 15, 2001.

### **The Joint CLEC Application:**

The Commission's rules provide that, following the issuance of an order on the merits by the Commission, a party may file an application for rehearing "which, if filed, must be filed within 30 days after service of the order on the party." People ex rel. Ryan v. Illinois Commerce Commission, 699 N.E.2d 218 (2d Dist.1998) (Emphasis added). The language in Section 200.880 of the Rules of Practice tracks Section 10-113 of the Public Utilities Act. 220 ILCS 5/10-113. Given that the 30-day time period for filing a rehearing is statutory, neither the Commission nor the parties may extend it. Id.

In this cause, the Commission's Order was served on January 24, 2001. The last date on which Applications for Rehearing could be filed was on February 23, 2001.

Under Section 1.25 of the Statute on Statutes, date of mailing constitutes date of filing. 5 ILCS 70/1.25. The Joint CLECs, however, did not file their application by mail. Rather, they filed by e-Docket.

Section 200.1040 of the Commission's Rules provides that "[t]he filing of an electronic document is effective upon acceptance of the complete document." 83 Ill. Adm. Code 200.1040. Acceptance by the Clerk's office can only occur during regular business hours, i.e., 8:30 a.m. to 5 p.m. Here, the CLECs submitted their application for filing on e-Docket at 5:58 p.m. on February 23, 2001. The filing status report in the Clerk's office indicates acceptance of the instant application at 9:36 a.m. on February 26, 2001. Because the Application of the Joint CLECs (McLeodUSA, Rhythms Links and Covad) was not filed until February 26, 2001, it is outside the time provided for under the Act and the Commission's rules. Thus, the Commission has lost jurisdiction to consider the matter.

### **The Ameritech Illinois Application:**

#### **Issue No. 4: Change Management Process - OIS Voting**

Pursuant to Paragraph 32 of the FCC's Merger Order, this Commission must independently approve the federally mandated 13-State Change Management Process ("CMP") when it is presented for review. According to AI, had the parties agreed on the OIS quorum requirement for the 13-State CMP when the instant arbitration action was filed, the OIS quorum question would not have been presented to the Commission as a stand-alone issue. Rather, the entire 13-state CMP would have been offered as a "resolved" matter. With this background, AI asserts that due to a "new development", i.e., the apparent recent agreement with the CLECs on a finalized 13-State CMP, the Commission should reconsider its ruling on Issue No. 4.

According to AI, as a result of continuing and very recent discussions with the CLECs and the FCC, there now appears to be agreement on all aspects of the 13-State process including the provision for a quorum in OIS voting for all multi-state OIS scenarios

whether 13-State changes (including those affecting Illinois) or regional multi-state changes (which uniquely affect the SWBT states or the five Ameritech states -including Illinois). As a result, AI requests the Commission to suspend its decision rejecting AI's proposed quorum requirement in connection with the OIS voting process until such time as it is presented with the finalized, agreed to 13-State CMP. Further, upon its review, and in the interests of uniformity, AI would request that the Commission defer to the processes set out in the 13-State CMP for application in Illinois.

In the alternative, and at the least, AI requests that the Commission clarify that its ruling on the quorum proposal applies to "single-state CMP changes" affecting Illinois only. AI maintains that the 13-State CMP quorum requirement, agreed to by the CLECs, should operate in those instances where changes affecting Illinois are of a multi-state nature.

### **Analysis and Recommendation:**

OIS voting arises only in the context of the federally mandated Change Management Process ("CMP"). AI tells us that pursuant to Paragraph 32 of the FCC's SBC/Ameritech Merger Conditions, the Commission has the opportunity to review the "final and agreed" 13-State CMP and the ability to impose additional requirements as it sees fit. (AI Application at 2). To be sure, Condition 32 of the FCC's Merger Order states, in relevant part, as follows:

Subject to arbitration, the resulting change management process shall be developed and offered to state commissions for their acceptance and approval, within 12 months after commencement of negotiations. SBC/Ameritech shall implement those aspects of the uniform change management process that are consistent with state commission rulings, agreed-to with the CLEC participants, and feasible. (Emphasis added).

A quorum requirement for OIS voting was an open question when this state arbitration proceeding began. It began moving in a narrower direction when AI filed its Reply Brief on Exceptions amending its proposal in conformity with ongoing CMP negotiations, and when Birch Telecom gave notice of its changed position on the matter. In the comments that followed, Staff and certain CLECs only addressed the Commission's authority to impose additional (not different) requirements for Illinois beyond the CMP. But, they did not evaluate the substance of AI's amended proposal or discuss how the different quorum standards, if agreed to in the CMP, were to interact and operate for Illinois.

When the Commission entered its Order, it rejected any type of quorum requirement because it was "not convinced that a disproportionately few CLECs can determine the implementation of a new release." (Order at 37). The Order further agreed, in dicta, with the comments of certain CLECs that "this Commission is not obligated to follow the lead of the 13-state CMP document." (Id.) The Order, however, did not, and based on the record

could not, define the parameters of its ruling. Moreover, there was still uncertainty and confusion as regards the status of the CMP.

To be sure, this state Commission is not precluded from adopting additional requirements for Illinois over those set out in the CMP that it needs to review. It does not appear, however, that dispensing with a quorum standard altogether for Illinois is in the nature of an additional requirement. It is a wholly different and may even be a conflicting standard, the scope and the ramifications of which have not been explored on this record and not addressed in the instant Order.

Because the Commission has made a “no quorum ruling” that is different from what has recently been agreed-to in the CMP, it will need to specify, at the least, that the lack of a quorum requirement for OIS voting is valid only in regard to “single-state CMP changes” affecting Illinois. To the extent that there are now settled regional OIS voting standards and 13-State OIS voting standards in the CMP - there is no way to determine on this record how and to what extent the Order’s ruling interacts or overlaps with these requirements or if uniformity is a matter of any concern. In this critical regard the Order is incomplete. (The change to the PEPO prompts such analysis)

Given that there were continuing discussions as regards the CMP while this proceeding was pending, and given the fact that the CMP- in its entirety - is still to be presented to the Commission for approval, this OIS voting issue appears to have been brought before the Commission prematurely. It may likewise be premature for the Commission to issue a final decision on OIS voting - even for Illinois state specific standards - without articulating a basis for imposing different or conflicting standards and outlining the scope of its ruling. That cannot be done on the basis of the instant record but it will be necessary on CMP review. While there was sufficient evidence/argument on the quorum requirement in the abstract, the record contains scarce evidence, if any, demonstrating the interaction between the 13-State and regional voting quorums and the need for, or the extent of, imposing different Illinois specific changes. As such, it is reasonable to defer a ruling on the issue until the Commission’s review of the 13-State CMP which now appears to be imminent.

For reason of this analysis, we believe it appropriate to grant AI’s Application for Rehearing on Issue No. 4

### **Issue No. 29/31: DSL Loop Qualification**

Ameritech seeks rehearing on two aspects of the Commission's decision on Issue 29/31: (a) the March 2001 date for implementation; and (b) the legal basis and analysis for requiring DSL loop qualification information on multiple loops.

#### **(a) Timing of Implementation**

AI maintains that the March 2001 implementation date set out in the Order for providing loop qualification information on multiple loops should be modified to adopt a schedule consistent with the realities attendant to significant OSS changes. Ameritech proposes that the initial requirements be published in April. Thereafter, the final requirements and implementation of changes would be worked out cooperatively with CLECs.

Ameritech contends that the delay is necessary because it is not yet clear how or what data CLECs want. For instance, do they want raw data such as Qwest provides to CLECs? Should the current OSS interfaces be modified or is it viable to develop a new and specific interface? According to AI, significant design choices need be made and each choice involves trade-offs among costs, benefits, speed of implementation and speed of performance. (AI Application at 4). It is wasteful, AI contends, for it to presume to make such choices without meaningful CLEC input and assessment at various stages. If required to implement the new OSS functionality in the next few weeks, AI fears the risk of incurring significant expense to develop a system that CLECs do not actually want.

Ameritech also points out that the CLECs relied on the activities of BellSouth in arguing that Ameritech should institute similar practices. Ameritech contends, however, that BellSouth took over a year to implement the changes (AI Application at 10). Since the time that its Application for Rehearing was filed, AI informs us that Covad filed a complaint against BellSouth alleging, among other things, that BellSouth does not provide loop qualification information electronically or even in a timely manner. (*Covad Comms. Co. v. BellSouth Corp.*, Civ. A. No. 1:00-CV-2414 (N.D. Ga., filed Dec. 22, 2000)). Ameritech alleges that the Covad complaint is relevant both to its assertion regarding the feasibility of what the Commission has ordered on Issue 29/31 and to Covad's assertions in this case about what BellSouth does in that area. (AI's Request to Take Administrative Notice of Additional Attachments to Verified Application for Rehearing at 4). It is unreasonable, AI asserts, to expect it to do in a few months what took BellSouth a year to start and which is still not settled. (Ameritech Application at 10).

As a final reason for delaying the implementation of this change, Ameritech points out that the March release is massive in terms of scope and allocated resources. (AI Application at 10). Ameritech contends that including this with the March release is unwise and may lead to a loop makeup system that simply does not work. (*Id.*)

(b) Merits of Decision

Ameritech points to a recent FCC decision to support its Petition for Rehearing. (*See, In the Matter of Joint Application by SBC Communications Inc., et al., for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, Memorandum Opinion and Order, CC Docket No. 00-217, rel. January 22, 2001) ("Kansas/Oklahoma 271 Order"). In that Order, the FCC held that the loop pre-qualification procedures currently used by AI's affiliate ILECs in Kansas and Oklahoma (which AI contends are the same as AI's Illinois procedures) do not violate the 1996 Act or the UNE Remand Order. (Kansas/Oklahoma

271 Order) (See also, *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket 96-98, FCC 99-238, 15 FCC Rcd 3696 (rel. Nov. 5, 1999)) ("UNE Remand Order"). According to Ameritech, the FCC also found that requiring CLECs to provide information on the type of service that they are providing is not anti-competitive or discriminatory. (Kansas/Oklahoma Order ¶122-23). This FCC Order, AI points out, was released two (2) days prior to the Commission's entry of the instant Order.

Ameritech acknowledges that state commissions may impose additional requirements on ILECs, consistent with the 1996 Act. It contends, however, that in order to do so, a state commission must apply the "necessary" and "impair" standards of Section 251 (d)(2). Ameritech argues that a "fact-intensive investigation" is necessary in order for the Commission to make this determination. (AI Application at 12). The record in this case, AI contends, is insufficient for the task.

### **Analysis and Recommendation:**

#### **(a) Timing of Implementation**

Regardless of whether rehearing is granted on the merits of loop qualification, we believe it important to look anew at the timing issue raised by Ameritech's Application for Rehearing. Ameritech proposed in its Brief on Exceptions and continues to propose that the initial requirements be published in April and that the final requirements and implementation of changes would be worked out cooperatively with CLECs. CLECs requested that these changes be implemented by December 31, 2000 or March 31, 2001 at the latest, but provided no explanation of the ability of AI's system to support those dates. Ameritech argues that the changes required are extensive, involve a number of choices and thus need significant CLEC input in order to be productive.

After submission of its Application for Rehearing, Ameritech filed additional documents to support its position to extend the period of time for implementation. Ameritech contends that the Complaint filed by Covad against BellSouth supports the position that more time is realistically required to implement the changes as ordered.

Important to our recommendation that Rehearing be granted is that sufficient time must be allowed for Ameritech to work in conjunction with CLECs in determining what the final outcome of this procedure should be and how this outcome will be reached. As Ameritech pointed out in its Application for Rehearing, the Order requires Ameritech to meet with CLECs, however, it does not allow time to "complete [changes] or for any back-and-forth evolution of proposals." (Petition at 9). The Commission has recognized the importance of providing for such a process in other facets of its Order.

#### **(b) Merits**

The Commission's decision on Issue 29/31 was based largely on provisions of the FCC's UNE Remand Order which, heretofore, had not been construed in a federal forum. Two days before the Commission entered the Order in Docket 00-0592, the FCC issued a decision on SBC's Section 271 Application in Kansas and Oklahoma. Here, for the first time, the FCC interpreted the DSL Loop Qualification requirements of Bell Operating Companies under the UNE Remand Order. (Kansas/Oklahoma 271 Order at ¶ 121).

Due to these recent developments at the FCC, Ameritech argues that rehearing on Issue 29/31 should be granted and we agree. In the Kansas/ Oklahoma 271 Order, the FCC found that it is not "self-evident from the UNE Remand Order that a [Bell Operating Company] must provide loop make-up information on all loops that serve a particular address." (Kansas/Oklahoma 271 Order, ¶ 128). The FCC determined that SBC's optimization process, which returned information on one loop in the pre-ordering session, did not violate the UNE Remand Order. (*Id.* at ¶128). The FCC, however, also stated that the 271 proceeding was not the proper forum for deciding this issue (which is better considered in a declaratory judgment action or a rulemaking) and that nothing in that decision precluded state commissions from imposing stricter requirements on ILECs provided that they were consistent with the federal Act. (Kansas/Oklahoma 271 Order, para 128; footnote 353).

As stated in the Kansas/Oklahoma 271 Order, the Commission may still require Ameritech to provide this information. Additional evidence, however, would be necessary. Under the 1996 Act, state commissions may impose additional requirements as long as they meet the "necessary" and "impair" standards of the 1996 Act and do not conflict with standards imposed by the FCC. (47 USC Sections 251 (d)(3) and 261 (c)). The record as it currently exists, contains no analysis of these standards and the Order did not proceed on this basis.

Given the Kansas/Oklahoma 271 Order, and the timing of that decision, we believe that rehearing on this issue is required. The instant Order's decision on Issue No. 29/31 was based on the UNE Remand Order without benefit of the FCC's Kansas/ Oklahoma 271 Order. This issue needs to be reexamined in light of the FCC's recent decision which makes clear that a certain analysis must be followed by state commissions before imposing additional requirements on ILECs.

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